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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SHEILA ROBINSON; STEPHEN  
ROBINSON,

Plaintiffs,

v.

ALVARADOSMITH, APC; JOHN M.  
SORICH; S. CHRISTOPHER YOO;  
LASHON HARRIS; CHRISTOPHER J.  
DONEWALD; ALYSON DUDKOWSKI;  
LASALLE BANK NATIONAL  
ASSOCIATION; EMC MORTGAGE, LLC;  
EDDIE CAMERON-AGENT FOR EMC;  
JPMORGAN CHASE & CO.; BANK OF  
AMERICA NATIONAL ASSOCIATION,  
DOES 1 through 5, inclusive,

Defendants.

Case No. 5:15-cv-01630 HRL

**ORDER THAT CASE BE REASSIGNED  
TO A DISTRICT JUDGE**

**ORDER GRANTING APPLICATIONS  
TO PROCEED IN FORMA PAUPERIS**

**REPORT AND RECOMMENDATION  
RE DISMISSAL**

Sheila and Stephen Robinson, who are representing themselves, sue for alleged violation of their civil rights. Their claims stem from underlying state court proceedings concerning the foreclosure and sale of property at 486 Churchill Park Drive in San Jose, California. The Robinsons contend that they still have a valid legal interest in the subject property.

In the instant action, the Robinsons allege that the defendants, through fraud and misrepresentation, wrongfully obtained judgment in the underlying state matters and violated the state court's discovery orders. They also claim that Stephen Robinson was not officially

1 dismissed as a party to those proceedings and that defendants wrongfully precluded him from  
2 presenting arguments and evidence to the state court. The named defendants include banks and  
3 entities that reportedly were involved in or had an interest in the underlying state court  
4 proceedings, as well as the law firm (and several of its current and former attorneys) that  
5 represented them. The Robinsons assert a claim under 42 U.S.C. § 1983 for alleged violation of  
6 their federal constitutional rights, as well as several state law claims for relief.

7 The Robinsons have each filed an application to proceed in forma pauperis (IFP). An IFP  
8 application may be granted if the court is satisfied that the applicant cannot pay the requisite filing  
9 fees. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should “gran[t] or den[y]  
10 IFP status based on the applicant’s financial resources alone and then independently determin[e]  
11 whether to dismiss the complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745  
12 F.2d 1221, 1226-27 n.5 (9th Cir. 1984). A court may dismiss a case filed without the payment of  
13 the filing fee whenever it determines that the action “(i) is frivolous or malicious; (ii) fails to state  
14 a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is  
15 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This court concludes that each of  
16 the Robinsons qualify financially for IFP status, and their IFP applications therefore are granted.  
17 Even so, this court recommends that this matter be dismissed because the Robinsons have not pled  
18 a viable federal claim for relief.

19 The Robinsons’ complaint asserts federal jurisdiction based on a claim under 42 U.S.C. §  
20 1983 for alleged violation of their constitutional right to due process under the Fifth and  
21 Fourteenth Amendments. The Fifth Amendment’s due process clause only applies to the federal  
22 government. Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008). The Robinsons do not  
23 assert claims against any federal defendants. Nor does it appear that they could. In any event,  
24 each of the named defendants is a private individual or entity; and, private individuals and entities  
25 do not act under color of state law, an essential element of a § 1983 action. Gomez v. Toledo, 446  
26 U.S. 635, 640 (1980). Purely private conduct, no matter how wrongful, is not covered under §  
27 1983. Ouzts v. Maryland Nat’l Ins. Co., 505 F.2d 547, 550 (9th Cir. 1974), cert. denied, 421 U.S.  
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1 949 (1975). Simply put: There is no right to be free from the infliction of constitutional  
2 deprivations by private individuals or entities. Van Ort v. Estate of Stanewich, 92 F.3d 831, 835  
3 (9th Cir. 1996). The Robinsons' complaint is based upon defendants' alleged conduct as private  
4 litigants in the underlying state court proceedings. There is nothing to indicate that they acted  
5 under color of state law. Moreover, attorneys in private practice are not state actors. See Briley v.  
6 State of California, 564 F.2d 849, 855 (9th Cir. 1977) ("We have repeatedly held that a privately-  
7 retained attorney does not act under color of state law for purposes of actions brought under the  
8 Civil Rights Act.").

9 Although the Robinsons have not named them as defendants, the complaint suggests that  
10 their claims are also based upon alleged misconduct by the state court judges in the underlying  
11 actions (see, e.g., Complaint at pp. 29-32). As to those allegations, this court finds that absolute  
12 judicial immunity applies. The Robinsons contend that the judges were biased, wrongfully failed  
13 to discipline defendants, wrongfully refused to make or issue certain findings, and entered  
14 allegedly erroneous judgments. It is well settled that even in civil rights actions brought pursuant  
15 to 42 U.S.C. § 1983, judges acting within their judicial jurisdiction are absolutely immune from  
16 liability for damages. Pierson v. Ray, 386 U.S. 547, 554, 87 S. Ct. 1213, 18 L.Ed.2d 288 (1967).  
17 This immunity applies even where a judge is accused of acting maliciously or corruptly. Id.  
18 "[T]he factors determining whether an act by a judge is a 'judicial' one relate to the nature of the  
19 act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of  
20 the parties, i.e., whether they dealt with the judge in his judicial capacity." Stump v. Sparkman,  
21 435 U.S. 349, 362, 98 S. Ct. 1099, 55 L.Ed.2d 331 (1978). As long as a judge has jurisdiction to  
22 perform the judicial act in question, he or she is immune "however erroneous the act may have  
23 been, and however injurious in its consequences it may have proved to the plaintiff," and without  
24 regard to the judge's motivation. Cleavinger v. Saxner, 474 U.S. 193, 199-200, 106 S. Ct. 496, 88  
25 L.Ed.2d 507 (1985) (internal quotations and citations omitted). Here, the record indicates that the  
26 complained-of conduct concerns alleged acts performed by the state court judges acting in their  
27 judicial capacity and within their judicial jurisdiction.

1 Moreover, to the extent the Robinsons seek to have this court review and reverse the state  
2 court’s judgments (see, e.g., Complaint at p. 41), this court lacks jurisdiction to do so. Under the  
3 Rooker-Feldman<sup>1</sup> doctrine, a federal district court lacks jurisdiction to review the final  
4 determinations of a state court in judicial proceedings. Noel v. Hall, 341 F.3d 1148, 1154 (9th Cir.  
5 2003).

6 Accordingly, this court finds the Robinsons' claims are not cognizable under § 1983 and  
7 that their complaint does not raise a substantial federal claim for relief. Nor is it apparent that they  
8 properly could plead one. There being no valid federal claim to confer federal jurisdiction,<sup>2</sup> there  
9 is no basis for the court to exercise supplemental jurisdiction over the Robinsons' state law claims.  
10 Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 664 (9th Cir. 2002). Alternatively, this court  
11 finds that it would be proper to decline to exercise supplemental jurisdiction over the state claims  
12 under 28 U.S.C. § 1337(c).

13 Because the parties have yet to consent to the undersigned's jurisdiction, this court  
14 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further  
15 RECOMMENDS that this matter be dismissed. Any party may serve and file objections to this  
16 Report and Recommendation within fourteen days after being served. Fed. R. Civ. P. 72.

17 | Dated: May 13, 2015

HOWARD RALLOYD  
UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983).

26       <sup>2</sup> Although the Robinsons do not allege diversity jurisdiction under 28 U.S.C. § 1332, this court  
27 finds no basis for it anyway. There is no showing that the requisite amount in controversy is  
satisfied. And, in any event, the record indicates that there is no complete diversity of citizenship  
between the parties. See Dkt. 1-1, Section III.

1 5:15-cv-01630-HRL Clerk sent copies of this order by U.S. Mail to:

2 Sheila Robinson  
3 486 Churchill Park Drive  
4 San Jose, CA 95136

5 Stephen Robinson  
6 486 Churchill Park Drive  
San Jose, CA 95136

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